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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/707,392

12/10/2003

Michael A. Johnson

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7590

07/26/2006

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EXAMINER

SNIDER, THERESA T

ART UNIT

PAPER NUMBER

1744

DATE MAILED: 07/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

5

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/707,392		JOHNSON ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Theresa T. Snider		1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/10/03, 4/7/05</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to because 0039, 0045 and 0046 disclose the 'packaging carton 70' in figure 7 however figure 7 appears to have a carton '60', which is disclosed in 0045. Please clarify. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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3. Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Exemplary of such:

Claim 1, line 14, 'a' should be replaced with 'the';

Lines 20 and 22, 'extraction cleaner' should be replaced with 'portable surface cleaning apparatus'.

Claims 2-10, 12 and 14-18, line 1, 'A' should be replaced with 'The'.

Claim 8, line 5, 'a' should be replaced with 'the'.

Claim 11, lines 2-3, would be more appropriately rewritten to '...apparatus comprises the step of: providing a portable surface cleaning apparatus that includes a handle pivotally mounted to a base that is adapted to move along a floor surface;';

Lines 4 and 7, 'upright' should be deleted;

Lines 13, the 'upper and lower sections' of what? The handle or the lower portion of the handle?

Line 15, the 'lower section' of what? The handle or the lower portion of the handle?

Line 17, 'shipping' should be replaced with 'packaging'.

Claim 12, line 3, 'upright' should be deleted.

Claim 13, line 12, 'a' should be replaced with 'the';

Line 15, 'assembly' should be inserted after 'handle'.

Line 19, 'surface cleaner' should be replaced with 'surface cleaning apparatus';

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Line 20, 'the extraction cleaner' should be replaced with 'surface cleaning apparatus'.

Claim 14, line 5, 'a' should be replaced with 'the'.

Claim 17, line 2, 'assembly' should be inserted after 'handle'.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 11 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by JP2000-166836.

JP2000-166836 discloses a portable surface cleaning apparatus having a handle pivotally mounted to a base (figs. 1-2, #11-13,9).

JP2000-166836 discloses forming the handle with separate upper and lower portions that can be separated for shipment (figs. 1 and 3-4, #13 and 12-11).

JP2000-166836 discloses forming the lower portion of the handle with upper and lower sections that can be manipulated into a relatively compact relationship (figs. 1 and 3-4, #12a, 11).

JP2000-166836 discloses mounting the lower section of the handle lower portion to the base for pivotal movement (fig. 2, #11).

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JP2000-166836 discloses separating the upper and lower portions from each other, placing the base with the lower section into a packaging container, placing the upper section of the lower portion into the container, placing the upper portion of the handle into the container (figs. 3-4, #13,12,11,9).

***Claim Rejections - 35 USC § 103***

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 13 and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over The Admitted State of the Prior art as set forth in the Preamble of the Jepson Claim (hereafter ASPA)

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ASPA discloses a similar surface cleaning apparatus however fails to disclose the handle having a base section with a pivot section pivotally attached thereto.

Greene et al. discloses a surface cleaning apparatus with a handle having a base section with a pivot section pivotally attached thereto (figs. 1 and 8, #36,20). It would have been obvious to one of ordinary skill in the art to provide the handle of Greene et al. in ASPA to greatly reduce the length of the carton required to pack the apparatus with the handle attached.

With respect to claim 16, Greene et al. discloses a hinge pivotally mounting the pivot section to the base section (figs. 1 and 3, #46).

With respect to claim 17, Greene et al. discloses the pivot section capable of pivoting about the bases section such that rear surfaces of each section face each other (fig. 3, #36,36 phantom).

9. Claims 13-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kasper et al. in view of Greene et al..

Kasper et al. discloses a similar surface cleaning apparatus however fails to disclose the handle having a base section with a pivot section pivotally attached thereto.

Kasper et al. discloses a base module (fig. 1, #14).

Kasper et al. discloses a handle assembly pivotally attached to the base module (fig. 1, #16).

Kasper et al. discloses a debris recovery system including a recovery container, suction nozzle, working air conduit and vacuum source (fig. 3, #46, fig. 2, #34,704,40).



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Kasper et al. discloses the handle having two sections (fig. 4, #570,560). Greene et al. discloses a surface cleaning apparatus with a handle having a base section with a pivot section pivotally attached thereto (figs. 1 and 8, #36,20). It would have been obvious to one of ordinary skill in the art to provide the handle of Greene et al. in Kasper et al. to greatly reduce the length of the carton required to pack the apparatus with the handle attached.

With respect to claim 14, Kasper et al. discloses a fluid dispensing system including a fluid dispenser, a fluid supply chamber and a fluid supply conduit (col. 13, lines 1-7).

With respect to claim 15, Kasper et al. discloses the recovery tank having an air-fluid separator and outlet opening (col. 23, lines 4-16).

With respect to claim 16, Greene et al. discloses a hinge pivotally mounting the pivot section to the base section (figs. 1 and 3, #46).

With respect to claim 17, Greene et al. discloses the pivot section capable of pivoting about the bases section such that rear surfaces of each section face each other (fig. 3, #36,36 phantom).

With respect to claim 18, Kasper et al. discloses the recovery container carried by the base module (fig. 3, #14,46).

***Allowable Subject Matter***

10. Claim 1 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.



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11. Claims 2-10 and 12 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

12. The following is a statement of reasons for the indication of allowable subject matter:

The prior art discloses a portable surface cleaning apparatus having a base module and a segmented handle assembly having an upper handle portion removably and pivotally attached to a lower handle portion, with the lower handle portion pivotally attached to the base module HOWEVER fails to disclose or fairly suggest the lower handle portion having a pivot section pivotally attached to a base section so that the pivot section can be folded to a first position against the base section and unfolded to a second, upright position to form the handle assembly for maneuvering the apparatus.

### ***Conclusion***

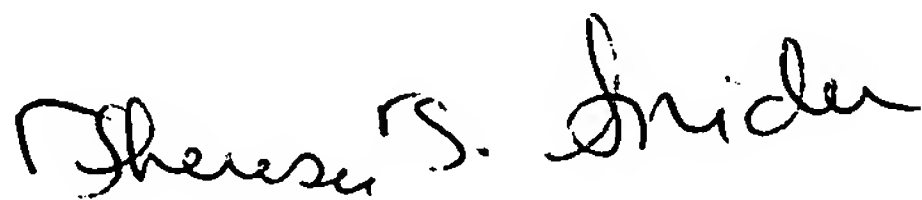
13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Sepke et al. discloses a portable surface cleaning apparatus with a segmented handle assembly wherein an upper handle portion is pivotally attached to a lower handle portion. Tondra et al. discloses a portable surface cleaning apparatus that disconnects from the motor actuator when folded down. JP8-299237 discloses a surface cleaning apparatus wherein the handle pivots and maintains electrical contact between the switch and the motor. Anderson discloses a surface cleaning apparatus wherein an upper handle portion is pivotally attached to a lower handle portion.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Theresa T. Snider whose telephone number is (571) 272-1277. The examiner can normally be reached on Monday-Friday (5:30am-2:00pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran can be reached on (571) 272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Theresa T. Snider  
Primary Examiner  
Art Unit 1744

7/19/2006